



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

November 19, 2003

Chairman Ted Smith called the meeting to order at 10:05 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Ted Smith; Jim DiPardo; Hugh Jenkins; Bill Duley; Kevin Mohammadi; and Bob Ziehmer.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Bill Zeaman; Richard O'Dell; Andy Reed; Mike Phillips; Brian Hicks; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office; John W. Coleman, Office of Surface Mining; James Rolls, Associated Electric Coop., Inc.; Mikel Carlson, Gredell Engineering; Brett Geger, APAC; Daniel R. Schuette, Deputy Director, Air and Land Protection Division, Missouri Department of Natural Resources; Junior Wood, Wood Coal Co.; Jack Atterberry, Associated General Contractors of Missouri, Inc.; Doug Mertens; Mertens Construction Co., Inc.; Michael Nixon and Jim Lunan, Holcim; Clay Gulley, Bentley Trucking; Steve Rudloff, Missouri Limestone Producers Association; and Charlie Baecker.

1. MINUTES OF THE SEPTEMBER 25, 2003, MEETING

Mr. Dipardo made the motion to approve the Minutes as written. Mr. Jenkins seconded; motion carried unanimously.

2. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas presented this report to the Commission. He stated the Perche Creek Project located in Boone County has been awarded. The contract was awarded to React Environmental Engineers of St. Louis in the amount of \$545,000.00. The project is now underway and is about 15 percent complete. The project consists of eliminating 38.5 acres of dangerous spoil piles and embankments, a coal waste pile, and closing a water-filled cistern associated with abandoned coal mining operations. The barren mine spoils will be graded, limed, and revegetated. Two ponds and three wetlands are being constructed as part of the project. The goal is to significantly reduce acid mine drainage and acid-forming sediments from entering Perche Creek. The work also includes removing a dangerous embankment and coal waste at an eroding load-out site known as Cemetery Gob.

Mr. Cabanas stated the Gans Creek Project located in Boone County has been completed. The final contract amount was \$20,042.47. The scope of work for the project consisted of reclaiming two small abandoned coal spoil areas, totaling .82 acres, and stabilizing the adjacent stream bank which was eroding into the acidic spoil. An exposed oil pipeline in one of the spoils areas was also covered. The barren spoils were graded, treated with ag-lime, and then covered with soil. A small wildlife/farm pond was excavated to obtain the soil cover material. Following final grading of the site, the disturbed areas were revegetated with a mixture of cool-season grasses and legumes that is consistent with the surrounding pastureland.

Mr. Cabanas stated that on January 10, 2003, the AML staff investigated an AML complaint report by the City of Mindenmines. A coal strip mine highwall that borders the north side of Highway 160 just west of the city limits was actively eroding and slumping toward the highway shoulder in several places along its 2,700-foot length. It was threatening to take out the electric, telephone, and water service lines that are located between the highway and the edge of the highwall. After satisfying various federal requirements, a pre-bid meeting with prospective bidders was held at the project site on April 15; and construction bids were publicly opened on May 1. The contract was awarded to the low bidder, Slates Excavating, LLC, of Nevada, Missouri, in the amount of \$268,400.00.

Mr. Cabanas stated the project calls for grading the adjacent strip mine spoils to completely backfill the highwall and its associated pit, thereby eliminating the slumping problem. Upon completion of the earthwork, the entire project site will be revegetated. The total affected area will be 35 acres. The site clearing and grubbing is approximately 85 percent complete. Earthwork is approximately 40 percent complete. The pit is being pumped to facilitate the backfilling operation.

Mr. Cabanas stated the Missouri Mining Pit 8A project contract was awarded to BRS Construction of Edina, Missouri, on July 12, 2003, in the amount of \$376,800.00. A notice to proceed was issued to the contractor on June 26, 2003; and the contractor mobilized on the site on June 27. Reclamation of this site is now complete and consisted of covering an exposed coal slurry pond, installing riprap swales, seeding, fertilizing, and mulching. Minor work related to finish grading, trash removal, and installation of road rock has recently been completed. One small problem arose in the project when a landowner objected to the installation of a rock swale on his property. The item was taken out of the project as a result, and the amount of payment to the contractor was changed to reflect this item being deleted from the contract. The final bid price was reduced to \$349,723.07.

3. INDUSTRIAL MINERALS

Permitting

Request for Hearing – Bentley Trucking, Inc. (Attachment 2). Mr. O'Dell stated the Program received a permit renewal application from Bentley Trucking in April 2003. The previously published public notice for the Salt River site in Ralls County had expired and therefore needed to be republished. Bentley Trucking published the public notice in the *Ralls County Herald*. The company also sent, by certified mail, a notice of intent to operate a surface mine to the appropriate county officials and adjacent landowners. The renewal application proposes that the company will continue to mine sand and gravel in the Salt River on 1 acre of land in Ralls County and that the site will be in operation until September 2030. During the public comment period, the Program received one letter concerning the proposed permit renewal application. Issues of concern in the letter were erosion of stream banks adjacent to the site and the length of the long-term stream protection plan.

Mr. O'Dell stated that Bentley Trucking has completed all requirements to renew their permit under the Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the petitioner's letter, it is the Staff Director's recommendation to issue the permit renewal application involving the Salt River site in Ralls County to Bentley Trucking and that approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

Mr. Charlie Baecker stated his property is adjacent to Bentley Trucking's mining site. He stated he had several concerns about the company's proposed renewal permit application. One concern is bank erosion which is a big problem. Another concern is the company's request for 28 years for 1 acre of land, as there is no 1 acre of land in the area that would have that much gravel on it. Prior to the company's other activities, there were 2 feet of standing pool at all times in the river; now there is none. The big concern is not what the company is doing now, as what could happen in 28 years?

Mr. Clay Gulley, superintendent for Bentley Trucking, stated he is not sure why the company chose the time period of 28 years. He stated he did not think the amount of sand and gravel to be removed would be very much, because the company has not operated on that site for 4 or 5 years. He stated the company may mine more from the site later. That is probably why the company chose the 28-year time period as well as not having to go through the permitting process again.

Mr. DiPardo asked whether the site had been abandoned for five years and no one has been mining there?

Mr. Gulley stated Bentley Trucking has not done anything at this site for five years. This past spring, the company washed about 600 ton of stockpile that was already on the site. Depending on whether Bentley Trucking gets any sand bids, whether the company will operate on the site in the next 2 or 3 years. The company wants to keep the site open because it is believed that it may improve in the area.

Mr. DiPardo noted that Mr. Baecker had stated that the water level had dropped 2 feet, that there had been water in the river and now there isn't. Mr. DiPardo asked whether the company had been processing rock and gravel and sand and were getting too far down and the water was running out?

Mr. Gulley stated Bentley Trucking has not been in the area for about 5 years. This year, the company had a stockpile from where the company had cleaned up the bar before.

Mr. Smith asked what is the access to the river—is there a defined bank that the company has to go down and how does the company get into the river?

Mr. Gulley stated there is an access road that goes onto a sand bar on a curve.

Mr. Smith asked whether the mining versus Mr. Baecker's property was on the outside of the curve or the inside?

Mr. Gulley stated it is on the straightaway before the curve.

Mr. Smith stated he was trying to picture the erosion that could take place when the company is pulling out or shifting the course of the stream.

Mr. Gulley stated he did not know how the erosion could happen south of there, since the river runs north through there for a ways. He stated the company has discussed with the other landowner, Mr. Long, plans for buffers to prevent any kind of erosion. Mr. Gulley stated the company would discuss with the landowners what it would do to help prevent any erosion, but he did not know what to do for what is south of there.

Mr. Coen noted the permit is renewed annually, but it is common for the sand and gravel operators just to maintain the right to remove gravel from the various bars, and whether or not they do is their choice.

Mr. Ziehmer asked regarding this permit, as the program is now working through some proposed regulations, as it would be issued for 28 years, during the next renewal, how

does that affect that—is it grandfathered in under existing or would additional guidelines come into play? How do those situations play out?

Mr. Coen stated he had not reviewed this permit recently to know what stream protection measures are already included in it.

Ms. Randles stated the permit is only granted for a one-year period. The mine plan period of 28 years is just a public notice issue.

Mr. Baecker asked if the landowner gives permission to the company, is that person locked in for the 28-year period?

Mr. Coen stated the mining company has to have access permission from the landowner. The Program's permit does not bind the landowner in any way. Unless there is some type of a binding contract between the landowner and the company, the landowner can change his/her mind.

Mr. Baecker asked whether the Program's permit gives the company access to a landowner's property against the landowner's wishes?

Mr. Coen replied no.

Mr. DiPardo made the motion that the Commission deny the request for a hearing and grant the permit to Bentley Trucking, Inc. Mr. Jenkins seconded; motion carried unanimously.

Enforcement

Formal Complaint (2687), Robert Servaes Construction and Quarry (Attachment 3). Mr. O'Dell stated that on August 4, 2003, the operator received an Assessment of Civil Penalty and Order for Notice of Violation 712-001. The Notice of Violation was issued for the operator's failure to submit the required renewal application and adequate bonding for his permit. The Order specified that a penalty of \$870.00 was being imposed for this Notice of Violation and that the operator had 60 days from receipt of the Order to pay the penalty. The operator has been advised that payment of the penalty ordered by the Commission was necessary within the time frame specified in the Order or a Formal Complaint would be presented to the commission for the operator's failure to remit the penalty to the Program. To date, no payment has been received. Since all regulatory time frames for appeal and payment of the penalty have expired, the staff recommends that the Commission sign the Notice of Formal Complaint and notify the operator that a Formal Complaint has been filed against him and that he has 15 days to request a hearing or pay the required administrative penalty.

Mr. Jenkins made the motion the Commission adopt the staff's recommendation and sign the Notice of Formal Complaint on Notice of Violation 712-001 for Robert Servaes Construction and Quarry and notify the operator that a Formal Complaint has been filed and that he has 15 days to respond. Mr. DiPardo seconded; motion carried unanimously.

Formal Complaint (2688), J.M. Burger, Inc. (Attachment 4). Mr. O'Dell stated that on August 18, 2003, the operator received an Assessment of Civil Penalty and Order for Notice of Violation 860-001. The Notice of Violation was issued for the operator's failure to retain adequate bonding by failing to replace bonding following the bond being canceled by the surety company. The Order specified that a penalty of \$890.00 was being imposed for this Notice of Violation and that the operator had 60 days from receipt of the Order to pay the penalty. The operator has been advised that payment of the penalty ordered by the Commission was necessary within the time frame specified in the Order or a Formal Complaint would be presented to the Commission for the operator's failure to remit the penalty to the Program. To date, no payment has been received. Since all regulatory time frames for appeal and payment of the penalty have expired, the staff recommends that the Commission sign the Notice of Formal Complaint and notify the operator that a Formal Complaint has been filed against him and that he has 15 days to request a hearing or pay the required administrative penalty.

Mr. Jenkins made the motion the Commission adopt the staff's recommendation and sign the Notice of Formal Complaint on Notice of Violation 860-001 for J.M. Burger, Inc., and notify the operator that a Formal Complaint has been filed and that he has 15 days to respond. Mr. DiPardo seconded; motion carried unanimously.

Settlement Agreement, Schultz Sand and Gravel (Attachment 5). Mr. Larsen stated that following an on-site inspection of the company's sites in March 2003, two Notices of Violation were issued to the company for field deficiencies noted during the inspection. Following receipt of the Notices and assessment, the operator requested an informal review by the Staff Director. The informal conference was held on July 22, 2003. Following the informal conference, the Staff Director offered a Settlement Agreement to the company wherein both Notices of Violation were affirmed. The penalty assessment for Notice of Violation 668-001 was reduced from \$660.00 to \$500.00. The penalty assessment for Notice of Violation 668-002 was affirmed at \$1,000.00. The company accepted the terms of the Settlement Agreement. Therefore, the staff recommends the Commission approve the Settlement Agreement. If approved, an order will be sent to the company for payment of the administrative penalties as outlined in the Settlement Agreement.

Mr. Jenkins made the motion that the Commission approve the Settlement Agreement as presented for Schultz Sand and Gravel. Mr. DiPardo seconded; motion carried unanimously.

In Re: National Refractories and Minerals Corp., Motion for Continuance of Hearing Date (Attachment 6). Mr. Coen stated that National Refractories and Minerals Corporation is in bankruptcy, and because of this, the company was unable to continue reclamation or any activities at approximately 27 industrial minerals sites. Mr. Coen stated that because National Refractories and Minerals Corporation was unable to complete their reclamation, the company received an enforcement action. The company was not contesting their obligations nor the fact of the violation, but the administrative process allowed the company to request a hearing, which they did. The Motion for Continuance is because the hearing should have been already held. However, the Program was attempting to settle the matter with National Refractories and Minerals Corporation. This has been done as per the Settlement Agreement (Attachment 7). In the Settlement Agreement, the company agreed to the facts of the violation and agreed to turn over all of their surety bonds to the Program so that the Program can complete the reclamation. Mr. Coen noted that one of the paragraphs in the Settlement Agreement deals with the disbursement of financial assurance. The company had financial assurance with other programs in the Department of Natural Resources, one of which was the Solid Waste Management Program. The company therefore included a paragraph in the Settlement Agreement to make a distinction between the mining financial assurance and solid waste financial assurance. Mr. Coen stated the Settlement Agreement has been signed by him and the attorneys. However, it also needs to be approved and signed by the Commission. Also, because the time for the hearing has passed, Commission approval is needed on the Motion for Continuance.

Mr. DiPardo made the motion to approve the Settlement Agreement and the Motion for Continuance for National Refractories and Minerals Corporation. Mr. Jenkins seconded; motion carried unanimously.

4. **BOND RELEASES**

Coal:

Mr. Hall stated the four sites requested for bond release have been inspected by Office of Surface Mining (OSM) personnel, and their findings and recommendations are listed in Attachment 8.

Associated Electric Coop., Inc., PP-02-06, NEMO Mine, Permit 1984-14. This request is for a Phase II and III liability release on 28.50 acres for a total release amount of \$14,250.00. This amount is the last of the bond amount remaining on this permit. The release area is located in Randolph County, Missouri. The area includes pasturelands and a pond. The stream and pond water quality is good. The banks of the impoundments are well vegetated, and no erosion is evident. The vegetation and hydrologic reviews were

completed and approved by the Program staff. Mr. Hall stated a site visit by OSM personnel on October 22, 2003, determined the ponds were constructed per submitted designs. The area has been deemed to meet all of the regulatory reclamation requirements, and it is recommended that the bond release be approved.

Associated Electric Coop., Inc., PP-02-10 (not PP-02-09 as stated on the agenda), **Thomas Hill Mine, Permit 1985-06.** This request is for a Phase I release on 11 acres for a bond release amount of \$22,000.00 and a Complete release on 10.7 acres for a bond release amount of \$26,750.00, all located in Randolph County, Missouri. The 11 acres includes an impoundment and its embankment which was found to be well vegetated. Erosion is not evident on any portion of the banks. An OSM engineer inspected the pond and found it to meet the regulatory requirements. The 10.7 acres of undisturbed lands covered an adjacent wooded area. Field inspections of the release area revealed the area has been reclaimed properly and meets the requirements for a Phase I and Complete/Undisturbed release. Therefore, it is recommended that this bond release request be approved. If approved, there will be \$1,269,030.00 remaining in reclamation bond.

Junior Wood, PP-03-03, Foster Mine, Permit 1988-03. This release request is for a Phase II and III liability release on 1.3 acres of prime farmland in Bates County. The bond release amount is \$650.00. The prime farmland is well vegetated and has met the vegetation requirements. There are no water bodies on this release area. Both the vegetation and hydrologic review were completed and approved by Program staff. OSM completed a field inspection of the mine site on September 23, 2003. It is recommended that this release request be approved. If approved, there will be no bond remaining on the site.

Wood Coal, PP-03-04, Mine #1, Permit 1995-01T2. This release request is for 125.1 acres of Phase II and III release for a bond amount of \$62,550.00; a Phase II and III on 1.5 acres with a bond amount of \$3,000.00; and 0.6 acre of Complete and Administrative with a bond amount of \$300.00, all in Bates County. An OSM inspection conducted on September 23, 2003, revealed the land use of pastureland is well vegetated. No erosion was evident, and the vegetation is sufficient to control any erosion. Both the ground water and surface water quality were good. The vegetation and hydrologic reviews were completed and approved by Program staff. The inspection also revealed that two items needed to be completed before the area would meet all the required reclamation and be eligible for release. These items included the removal of the ground water monitoring wells and reclaiming the sites and over seeding an area where hay bales had been burned. During a follow-up inspection conducted on October 8, 2003, it was determined that the water wells had been removed and the sites reclaimed. Also, the area requiring over seeding had been completed and vegetation was evident. Therefore, it is recommended

that this bond release request be approved. If approved, there will be no bonding remaining on the site.

A representative from Associated Electric thanked everyone for the speedy bond release process, and Mr. Junior Wood stated he was pleased to have worked with OSM and Program staff since 1985 and thanked them.

Mr. Jenkins made the motion that the Commission approve all of the above bond release requests as presented for Associated Electric Coop., Inc., Junior Wood, and Wood Coal. Mr. DiPardo seconded; motion carried unanimously.

Summary of Industrial Minerals Bonds Released by Staff Director (Attachment 9).

Mr. O'Dell presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests since the September 2003 Commission meeting which are as follows:

Delta Asphalt, Inc., Dexter Gravel Pit: 1.6 acres of water and 12.4 acres of recreation for a total release amount of \$7,000.00.

Trager Stone, Inc.: 12 acres of industrial at the Mooresville Mine and 8 acres of industrial at the Gallatin Quarry for a total release amount of \$10,000.00.

Central Stone Company, CS-11 West Quincy: 39 acres of water, 5 acres of wildlife, and 1 acre of industrial for a total release amount of \$22,500.00.

A.P. Green Industries, Inc.: 5 acres of pasture and 4 acres of water at the Hengstenberg Pits 2 and 9; 2 acres of pasture and 1 acre of water at the Scego Pit 3; 1 acre of pasture and 1 acre of water at the Zeman Pits 3 and 8; 4 acres of wildlife at the Farnberg Pit 1; 9 acres of wildlife and 4 acres of water at the Bueker Pits 4, 10, 13A, 14, 15, and 16; 1 acre of wildlife and 1 acre of water at the Wilson Pit 1; for a total bond release amount of \$16,500.00.

Lincoln County Stone: 108 acres of undisturbed for a total release amount of \$54,000.00.

North American Refractories, Inc., Casper #2: 1 acre of wildlife and 1 acre of water for a total release amount of \$1,000.00.

Hunt Midwest Mining, Inc., Stamper Quarry: 21 acres of water and 8 acres of pasture for a total release amount of \$14,500.00.

5. OTHER BUSINESS

Commission Review of Existing Policy Concerning Mining vs. Development

(Attachment 10). Mr. Coen distributed copies of the current existing policy on mining versus development and the proposal submitted by industry to the Commission. Mr. Coen stated the current policy was approved by the Commission in 1995. During the past year, the Program has received three challenges to the policy. One project was at the Lake of the Ozarks where APAC was a subcontractor to remove rock for a condominium development. Mr. Coen stated he decided to give a one-time exemption to this policy because of pending condominium development of a multi-million dollar project that would have been in default if the Program had requested that APAC get a permit.

Mr. Coen noted another instance involves an on-going site in the Kansas City area (Independence) by Team Excavating. This company is simply trying to level a piece of property for development, but in order to level the property, the company has had to remove rock and move it off to other projects. The company is not selling the rock, but they are taking it to other places and using it. The company has currently ceased this operation. The company has submitted a permit application to the Program, but they do not wish to go forward with that permit, as they are waiting for a review of the policy by the Commission.

Mr. Coen stated the third instance is a site in Branson where the developer had a plan approved by the local planning and zoning with a bond in effect, guaranteeing that the site would be reclaimed. Because of the bond and the local plan, the Program accepted that as being adequate. So, really, the only one that remains as an unresolved issue is the instance in Independence. The Program has suggested to the company that, while they have a local plan approved for the development, they do not have a bond in effect and that they should consider obtaining a bond at the local level. Mr. Coen stated he did not know if the company has done this.

Mr. Coen stated the Program has met with the Association of General Contractors, the Missouri Limestone Producers Association, and Ms. Randles. At this meeting, this policy was discussed further and how to recommend to the Commission how the policy could be changed. To date, no draft has been written for presentation to the Commission. Mr. Coen noted that it can be agreed that the legislative intent was not to regulate commercial property improvement, at least in the way of a mining permit. The problem arises when, in the process of that improvement, rock is taken off site and either used or sold commercially at other locations. Industry has indicated that this may be occurring at hundreds of sites at any one time during the year. When the Commission wrote the current policy, the condition was that cut and fill on the site was acceptable, but nothing should leave the site. It is understood that there are many cases where that is simply

impossible, that there is more cut occurring than fill needed at a site. Mr. Coen stated the excess material is thus used elsewhere.

Mr. Coen stated, at the site in independence, while the company has voluntarily submitted an application, the company asked when the Program would investigate others who are doing the same thing, etc. The Program feels uncomfortable in enforcing a policy which is really not a rule, although it could be argued that the policy simply explains the current rule. Mr. Coen stated that, before a policy can be drafted for recommendation to the Commission, the Program needs some guidance from the Commission. Does the Commission want to broadly include many of these project development sites as mining sites or does the Commission want to limit as many of those as possible from coming under the permitting process? That whole viewpoint will determine how the wording should be written or whether the current policy should stay in place. The real test is, in the end, what is the reclamation liability of these sites. That is the purpose of the permit and bond so that, in the end, we will minimize reclamation liability to the State of Missouri. So, to the extent that ground is developed and parking lots and buildings are put up, there isn't a liability when they are done, but, in the meantime when there are acres disturbed and things don't go well and the endeavor fails and the company walks away from the site, then there is a liability.

Mr. Coen stated this is an issue that is important to everyone. It is important to the Program to make sure the staff is clear on what the Commission wants and also what the law allows the Program to do. It is important to the industry for their reasons.

Mr. DiPardo asked whether the company in Independence was taking material off one site and using it for their own use somewhere else?

Mr. Coen stated some of it was not in the same county as Independence.

Mr. Smith stated an example: a dirt contractor, an excavating contractor has a contract on site with contractor A to excavate his site and he runs into rock. He also has a contract with contractor B to do some excavating work for him that requires some cut, but also some fill. He is able to be the successful bidder on that because he knows he has rock coming out of A that he can use over here on B. It may be in the same county, it may be in the same city, or it really doesn't matter. Now, he is hauling that and he is, in essence, getting paid over here for taking this rock out and he is getting paid to deliver the rock here.

Mr. Jack Atterberry, Associated General Contractors of Missouri, stated he supported Mr. Coen's request to the Commission for guidance as to the general direction that we want to go regarding this issue, and, beyond that, he hoped the Commission could set a time

frame today within which this issue could be resolved. Mr. Atterberry stated that, in the past and at the time the policy was developed in 1995, it has been felt that the legislative intent of the act was not to regulate land development excavations for commercial and industrial purposes. It is hoped that all parties could agree with this intent. However, the current policy does just that in many circumstances because it relies on criteria based on what the activity is. Is a mineral excavated in some manner and moved to another site, or was it sold? Mr. Atterberry stated that could or could not be mining, depending on what the primary purpose is of that particular site. He stated a draft revised policy has been developed, and indicated that his group is asking that the Commission look at the purpose and utilize criteria which should include whether there is a contract with a public entity that has caused the mineral to be excavated and used at that site or moved to another site, or is there a contract with a private entity that has a specified completion date, contract amount, and certain activities to be performed. He felt the gray areas are in land improvement where the future use of the site where the excavation is occurring is not clear cut in any contract, is going to be used for something some day, but it is uncertain what. It is hoped that through meetings, all parties could agree and present a proposal to the Commission in the near future. Mr. Atterberry stated that although this issue has not come up that often since the adoption of the policy in 1995, it is generated on citizen complaint. It is the Commission's role to respond to citizens and make sure the laws are followed. If there is a contractor that has a contract for completion of a project, public or private, and there is a developer who has put millions of dollars into developing a site, and it gets hung up on whether or not a mining permit is needed, it will be a difficulty to go through the application process, which usually takes a minimum of six months to get a mining permit, each time for a new development. He thanked the Commission and the Program staff for the time spent in addressing this important issue.

Mr. Jenkins asked what the staff's position is on the industry's proposed draft of the mining vs. development policy?

Mr. Coen stated it is the industry's draft and that the Program staff does have a disagreement under item C dealing with "Land Improvement." The staff is not recommending that the Commission adopt this particular version.

Mr. Steve Rudloff, Missouri Limestone Producers Association, stated this issue could be taken to two extremes—one side would have the staff chasing every development project in the State and would not be a good use of the resources of the Program. Another side is that if these development projects are going to be required to have bonding and apply for a permit, then this process would trigger the public notice process and would involve the hearing aspects of the law and also involve zoning issues. Another side would be that someone might open a quarry and indicates that eventually the hole in the ground will be a pond and homes will be built around it, so it is considered development and no Program

permit is needed. Mr. Rudloff stated none of these extremes would be desirable. He indicated there are members of the Association on both sides of the issue. What is needed is some reasonable common sense middle ground which he is willing to help negotiate.

Mr. Doug Mertens, Mertens Construction Company, stated his concern is the issue of what is development and at what level is the development being done for the sale of the material underneath it—is it offsetting the cost of the development and would the development be done otherwise if it were not able to generate any income off the property from the material or the minerals? For example: an apartment complex is being built on a hillside and the contractor realizes that if he took off 10 more feet, it would not change the development, but he could get another 50,000 tons of material to sell. Another issue coming from the larger cities is not only do you see the material being shot down and moved, it is being screened on site and put into marketable products. Mr. Mertens stated that as a company that goes through all the routine and process of permitting and up through the federal level and through the Mine Safety and Health Administration, he is concerned that some of these developments would not otherwise be developed if it wasn't for the value of the mineral underneath it. Could it be justified to put an apartment where it would take a contractor \$50,000.00 to move the material out unless he could sell that material for \$50,000.00 to offset the cost? Mr. Mertens stated the definitions will be the key as to what is development and who will determine when the material becomes of value to the development or it becomes a nuisance that is trying to be eliminated.

Mr. DiPardo noted that a lot of preliminary work goes into picking a site to build a supermarket or apartments. If everyone did their homework and they are on site doing test drilling and site sampling, they will know what is underneath. They would not build on a sanitary landfill. If they know there is rock underneath that they think they could market, why would there not be time enough for them to apply for a permit? There should be a way to process the permit faster than six months.

Mr. Brett Geger, APAC, stated in their instance, they did not have a problem with applying for a permit. What was the hang up was the public notice that would have to be run and the potential for hearings. This process would cause a big delay.

Mr. Jenkins asked Mr. Coen whether he was wanting the Commission to adopt a time frame to get this issue resolved?

Mr. Coen stated there needs to be a resolution to this issue, especially as it relates to the one company in Independence who is waiting for the outcome of this issue. Perhaps, that company needs to make its presentation to the Commission at the next meeting so the Commission can decide where they would fit in the policy. No one else is waiting on the outcome of this issue other than this company. It is an issue that needs to be finished.

Mr. Mertens stated he did not have an issue with the Highway Department acquiring land for a highway and taking the cut fill and using it on the site. However, one issue of concern is that when a company bids on a fill job where the material is not available, there are adjacent river bluffs and banks shot down and there might be a shed put up shortly thereafter. The landowners are receiving royalties and payment for the material. The company would then truly be mining. The material is not coming off the site, but off private property. This issue sometimes falls through the cracks because the project is considered a highway job.

Mr. Smith stated he has noted several instances where new homes are being built and the material is being removed from the site. The Program does not have the staff to deal with this issue. Where do you draw the line from an individual, single-family dwelling where they have dug into the hillside to make a walk-out basement and the dirt is being hauled to another site where fill dirt is needed to fill in because it is being built into the side of a hill? If the interpretation presented in Attachment 10 is followed, this problem will be faced on and on.

Mr. Smith stated the Commission is in the business of reclamation, not in the enforcement business. An issue arises that requires reclamation, then we need to address it. How we do that without getting into looking at the whole scope of things will be a laborious task to come up with that. Also, to be considered is the instance where a company runs into a lot of rock and it brings in a portable crusher to make it smaller so it can be used for other purposes or sell it off or on the site, the Commission needs to be very aware of its responsibility to the limestone industry as well as the sand and gravel industry in that they would be doing the same thing. Mr. Smith stated that allowing the company in Independence to make a presentation before the Commission for a specific permit is reclamation required, first and foremost. If it is a developer, he will not want a big hillside cut left hanging out there that would be a potential liability to him or that it could ruin his apartment complex or whatever it is. If the excavator is selling the gravel in a commercial way rather than using it for fill on another project, the Commission would then need to take action that supports the limestone producers and the quarrying operations. Mr. Smith suggested that the Independence developer or his representatives bring that to the Commission meeting so we can move it forward and then we have a time frame that we can work with the AGC and the MLPA, as well as possibly other groups, to develop a workable solution on identifying when is it quarrying and when is it in the normal course of excavation and moving of that material.

Mr. Rudloff stated the law seems to address mine land reclamation. There may be a lot of commercial projects going on that may leave unreclaimed land. The question then is how narrowly or broadly do we define mining.

Mr. Smith asked that the staff ask the developer in Independence to make a presentation of his situation to the Commission.

Mr. Coen stated the staff would contact the developer.

Mr. Smith asked Mr. Atterberry to bring comments from both builders associations in the St. Louis AGC in the building programs along with Mr. Atterberry's comments.

Mr. Atterberry stated he would be happy to do this.

Land Reclamation Program Employees of the Month for October and November.

Mr. Coen noted the LRP Employees of the Month for October was Clint Bishop and for November, Andy Reed.

Presentation of Resolutions. Resolutions were presented to Ted Smith and Brian Hicks for their commitment and dedication to the protection of the environment and a job well done on behalf of the Land Reclamation Commission and the people of the State of Missouri.

Proposed Schedule of Commission Meetings for 2004 (Attachment 11). Mr. Jenkins made the motion to adopt the schedule of Land Reclamation Commission meeting dates for 2004 as listed in Attachment 11. Mr. DiPardo seconded; motion carried unanimously.

Mr. Daniel Schuette, Deputy Director, Air and Land Protection Division, Department of Natural Resources, stated that with regard to the "mining vs. development" policy, it should be noted that the Department of Natural Resources is not supposed to be a planning and zoning type agency. In the past, the Commission has done a good job in accomplishing this and should make sure that it does not get more and more involved in that issue. Regarding whether development is for an existing part of the property such as condominiums versus someone just developing a piece of property for future potential future use, those are two different distinct types, the latter being more of a concern. Mr. Schuette also suggested that a time be set on future agendas for public comments.

Closed Session. Mr. Jenkins made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on January 22, 2004, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. DiPardo seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Chairman

DRAFT